IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6517 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJ AGRO FERTILIZERS

Versus

STATE OF GUJ

Appearance:

1. Special Civil Application No. 6517 of 1988

MR TANVISH U BHATT for Petitioner.

Mr.U.R.Bhatt, AGP for Respondent No. 1,3-6

RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 26/11/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The petitioner, a partnership firm has challenged by way of this petition under Article 226 of the Constitution, the orders dated 24th May, 1982 (Annexure A/2) and 16th November, 1983 (Annexure A/5), and sought relief that the petitioner is entitled to sales-tax exemption to the tune of Rs.2,42,165/- instead of the sum of Rs.1,29,300/-.

2. Mr. Tanvish U.Bhatt, learned Advocate for the petitioner submitted that in light of Government Resolution dated 22nd December, 1977, the Government floated a new industries scheme for grant of sales=tax exemption. That on the basis of the said scheme, the petitioner established an industrial project in Bavalvadi, Taluka Dhoraji, District Rajkot by investing a sum of Rs.4,84,329/-. According to the petitioner, in terms of the provisions of the scheme, the petitioner was entitled to sales=tax incentive at 6 percentage of the fixed assets for the prescribed period depending on the grade of growth center. It was submitted that respondent nos.2 and 3 were required to issue eligibility certificate and on the basis of such a certificate respondent nos.4, 5 and 6, namely, the sales-tax authorities were required to work out the quantum of exemption to which the petitioner was entitled. That the petitioner had accordingly been granted provisional eligibility certificate and on the said basis, exemption certificate by the sales-tax authorities to the extent of 50% of a sum of Rs.2,97,839/- which was the amount invested upto 9th October, 1981, the date of commencing commercial production. On the basis of communication dated 5th October, 1982 issued by GSFC granting cash subsidy on the basis of investment figure of Rs.2,58,600/-, the respondent-authorities amended the eligibility certificate and the consequential exemption certificate to hold that the petitioner was, in fact, entitled to exemption to the tune of Rs.1,29,300/- only and such exemption shall be in force for a period commencing from 9th October, 1981 to 8th October, 1988. It is the amended certificates which have been challenged by the petitioner.

3. Mr. Tanvish U.Bhatt, on behalf of the petitioner submitted that GSFC had subsequently issued a project completion certificate wherein eligible investment made by the petitioner was worked out at Rs.4,84,329/-. The respondents had not taken the same into consideration but had proceeded on the footing that the earlier figure of investment of Rs.2,58,600/- arrived at for grant of subsidy was the final figure on which the petitioner was

entitled to be granted sales-tax benefit.

4. The grievance made on behalf of the petitioner is that though the petitioner has approached the respondent-authorities from time to time, by way of various representations, the said authorities refused to look into the project completion certificate issued by GSFC for the purposes of revising upward the amount of investment on the basis of which the entitlement to exemption is required to be worked out.

5. Mr. U.R.Bhatt, the learned A.G.P. appearing on behalf of the respondents has relied on the affidavit-in-reply filed on behalf of the respondents. However, he has very fairly accepted the suggestion coming from the learned Advocate for the petitioner that in case GSFC is called upon to issue necessary clarification the controversy could be resolved. In light of the aforesaid submission made by the learned Advocates, it is not necessary to enter into detailed discussion on merits of the claims and the stand adopted by the respective parties.

6. As can be seen from the affidavit-in-reply dated 9th March, 1981 filed on behalf of the respondent no.2, the said authority states that the eligible amount of sales-tax exemption has been computed on the basis of cash subsidy sanctioned by GSFC to the petitioner-Unit. Thereafter, in paragraph nos.10 and 11, respondent no.2 states thus:

"Even though as per the representation of the petitioner dated 10-8-87 and 17-7-88, appended to the petition, the aforesaid office had asked the Manager (Small Loan Division), Gujarat State Financial Corporation, Ahmedabad, to submit appraisal report of fixed capital investment of the petitioner so that decision can be taken by the aforesaid office on the representation of the petitioner. After receipt of the appraisal report from G.S.F.C., the case will be decided accordingly.

"I say that procedure in general and also more particularly keeping in view G.S.F.C's findings vide their office note dated 3-10-83, the petitioner's eligibility can only be revised on receipt of detailed appraisal on investment in fixed assets, as claimed by the petitioner."

7. Therefore, it is apparent that respondent no.2 who is to decide the eligibility and the quantum thereof

has in no uncertain terms accepted the position that after receipt of the appraisal report from GSFC, the case of the petitioner shall be decided. In other words, the petitioner's eligibility can only be revised on receipt of detailed appraisal of investment in fixed assets as claimed by the petitioner.

8. In these circumstances, it would be in the fitness of things, if the parties are directed to approach GSFC and obtain the appraisal report, which in fact, was called for by the respondents, and resolve the controversy thereafter. The respondents are, therefore, directed to obtain the appraisal report from GSFC and then take a decision in accordance with provisions of the scheme and in accordance with law, after hearing the petitioner, if necessary.

9. The petition is disposed of accordingly, Rule made absolute to the aforesaid extent. There shall be no order as to costs.

(D.A.Mehta,J.)

(Ms.H.N.Deavani,J.)

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